

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

IGNACIO LANUZA,

Plaintiff,

vs.

JONATHAN LOVE, and  
UNITED STATES OF AMERICA,

Defendants.

**Case No. 2:14-cv-01641-BJR**

**Declaration of Timothy M. Durkin,  
Assistant U.S. Attorney re:  
Request for Costs and Attorney's  
Fees for Plaintiff's Frivolous Action**

I, Timothy M. Durkin, Assistant U.S. Attorney (EDWA), declare and state under the penalty of perjury under the laws of the United States (28 U.S.C. § 1746) that the following information is true and correct to the best of my knowledge, information and belief:

I am above the age of 18, am not a party hereto, and am competent to testify to the matters stated herein, which are based on personal knowledge and/or review of information or records known to me that were produced and/or provided by and through discovery responses, disclosures, records subpoenas, depositions and/or records requests connected with the parties' litigation and which declarations, deposition transcripts – excerpts, public records, and other produced records and/or electronic material, and/or judicially noticed materials, should be allowed and considered admissible evidence at the time of proffer, hearing or trial, pursuant to the Federal Rules of Evidence, including but not limited to Fed. R. Evid. 201, 601, 602, 902; *e.g.*, the Court may take notice and accept "any facts ... not subject to reasonable dispute since ... the accuracy of which cannot be reasonably challenged." Fed. R. Evid. 201(b)(2), 902; *Mathews v. NFL Mgmt. Council*, 688 F.3d 1107, 1113 (9th Cir. 2012); *O'Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1224 (10th Cir. 2007):

1           1.       I am an Assistant United States Attorney for the Eastern District of Washington and  
2 one of the attorneys for the Defendant who has appeared in this action wherein the Plaintiff Mr.  
3 Lanuza, through his attorneys Matt Adams, NWIRP, et al., prosecuted a **\$500,000 claim** for damages  
4 under the Federal Tort Claims Act for the United States alleged *malicious prosecution* of Plaintiff  
5 for pursuing Immigration Court removal – deportation proceedings in 2008, when Plaintiff was  
6 unlawfully present in the United States; .

7           2.       In that capacity, the Plaintiff and the United States were required to make initial Rule  
8 26 Disclosures of records and information;

9           3.       Notwithstanding the United States objecting to and informing Plaintiffs' several  
10 counsel, on multiple occasions, that subject matter jurisdiction was absent and therefore *no discovery*  
11 was appropriate under the FTCA, Plaintiff's counsel rejected this notion and served multiple sets of  
12 written discovery (approximately six, including multiple interrogatories and requests for production)  
13 and further required the United States to incur substantial costs, expenses and attorney time in  
14 having to provide responses and participate in depositions in this matter;

15           4.       Plaintiff's counsel also served multiple subpoenas and noted multiple depositions  
16 (approx. nine) of U.S. DHS and ICE officers and immigration attorneys, including retired counsel  
17 and one sitting Immigration Court Judge, without first trying to contact or consult opposing counsel;

18           5.       On or about **August 14, 2019**, I served on Plaintiff's attorneys an Offer of Judgment  
19 in the proposed amount of \$4,000 and in the form of a proposed settlement agreement with a release.  
20 Plaintiff and his counsel rejected settlement of this case for that amount. Attached herewith as  
21 **Exhibit 702** is a copy of the email (ECF registered addresses) I sent enclosing the proposed offer of  
22 judgment - settlement of \$4,000;

23           6.       On or about September 8, 2015, I served on Plaintiff's counsel Notification of  
24 Plaintiff's and his counsel's Rule 11 violations. Attached herewith as **Exhibit 701 is the Rule 11**  
25 **Brief** I served on Plaintiff's counsel at counsel's registered ECF addresses;

26           7.       The United States incurred significant transcript costs that were ordered in connection  
27 with the undersigned counsel's preparation of the United States' defense of this case, which includes  
28 preparation of this case for a potential trial. Attached herewith as Exhibit 703 are receipts for the  
payment of transcripts;

          8.       The United States also incurred significant travel costs in having to review and  
respond to Plaintiffs' counsel's invasive discovery requests and appear for and participate in

1 Plaintiff's counsel's multiple noted depositions. Attached herewith as Exhibit 704 are invoices  
2 reflecting travel costs incurred in having to appear in the WDWA to defend this frivolous lawsuit  
3 against the United States

4 9. Thus, recoverable costs to date are:

|   |            |
|---|------------|
| 5 ♦ K&K Reporting - Transcript from Ninth Cir. Argument (filed in support of U.S. Motion<br>6 to dismiss: | \$196.00   |
| 7 ♦ Esquire Transcripts – Bob Peck Deposition   | \$404.90   |
| 8 ♦ A. Varona, Court Reporter – Anthony Dodd depo transcript  | \$285.75   |
| 9 ♦ A. Varona, CR – Mark Bailey depo transcript   | \$239.00   |
| 10 ♦ U.S. Legal Support (CA Reporting) – dawn Calfee Transcript   | \$595.00   |
| 11 ♦ U.S. Legal Support (CA Reporting) – Mitchell Diaz transcript   | \$527.40   |
| 12 ♦ Amanda Varona (CR) – Jonathan Love transcript  | \$352.00   |
| 13 ▪ E-2 Travel Voucher (Seattle – Sept. 3,2015   | \$1,062.11 |
| 14 ▪ E-2 Travel Voucher (Seattle – Sept. 9, 2015  | \$808.89   |
| 15 ▪ E-2 Travel Voucher (Seattle – Sept. 9, 2015  | \$861.64   |

16 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August 2019.

17  
18 *William D. Hyslop*  
United States Attorney (EDWA)

19  
20 s/ **Tim M. Durkin**  
Timothy M. Durkin, AUSA  
Special Counsel for U.S. Attorney General

1  
2  
3 **Certificate of ECF Service**

4 I hereby certify that on the date that I electronically filed the foregoing with the Clerk of the Court  
5 using the CM/ECF System that the Court's ECF system will send notification of such filing to the  
6 following, and/or I hereby certify that I have mailed by U.S. Postal Service the document to the  
7 following non-CM/ECF participant(s):

8 ***Counsel for the Plaintiff:***

9 Matt Adams, [matt@nwirp.org](mailto:matt@nwirp.org);  
10 Christopher Schenck, [chris.schenck@gmail.com](mailto:chris.schenck@gmail.com);  
11 Stephanie Martinez, [stephanie@nwirp.org](mailto:stephanie@nwirp.org);  
12 Aaron Korthius, [aaron@nwirp.org](mailto:aaron@nwirp.org).

13 ***Defendant Pro Se***

14 Jonathan Love, [Jonathanlove786@gmail.com](mailto:Jonathanlove786@gmail.com).

15 And to the following non-ECF party: N/A

16 s/ Tim M. Durkin

17 Timothy M. Durkin, AUSA